

IN THE MATTER OF
JORGE ESCALANTE
Appellant

* IN THE
*
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 03-C-02-1391
* * * * *

COUNTY BOARD OF APPEALS,
FOR BALTIMORE COUNTY
Appellee

* * * * *

RULING

This matter came before the Court as an appeal filed by Jorge Escalante, Appellant, from an Order of the County Board of Appeals of Baltimore County ("Board") in Case No. 00-184-X on January 9, 2002, which denied Appellant's Petition for Special Exception for a professional office in a residential property zoned density residential (D.R.) 5.5. Arguments were heard on October 1, 2002. Upon consideration of the entire record, arguments of counsel, and for the reasons set forth in the Memorandum Opinion filed concurrently herewith, it is thereupon the SA day of October, 2002, by the Circuit Court for Baltimore County, Maryland,

ORDERED, that the decision of the Board shall be and the same is hereby **AFFIRMED**.


Judge Susan Souder

CC: Peter Max Zimmerman, Esq.
Carole S. Demilio, Esq.
Michael Tanczyn, Esq.

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OCT 28 2002

FILED OCT 8 2002

BALTIMORE COUNTY
BOARD OF APPEALS

PT

IN THE MATTER OF
JORGE ESCALANTE

Appellant

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IN THE

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CIRCUIT COURT

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FOR

COUNTY BOARD OF APPEALS,
FOR BALTIMORE COUNTY

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BALTIMORE COUNTY

Appellee

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Case No. 03-C-02-1391

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MEMORANDUM OPINION

This matter came before the Court as an appeal filed by Jorge Escalante, Appellant, from an Order of the County Board of Appeals of Baltimore County ("Board") on January 9, 2002, which denied Appellant's Petition for Special Exception for a professional office in a residential property zoned density residential (D.R.) 5.5. Arguments were heard on October 1, 2002. For the reasons discussed herein, the decision of the Board is hereby affirmed.

BACKGROUND

Appellant, a licensed real estate broker, purchased the property at issue, 3106 Sixth Avenue, in October 1998. T. 32. Although other properties nearby are zoned to accommodate businesses, the property at issue is zoned D.R. 5.5.¹ T. 12-13. Office use is prohibited in residential zones except as an accessory home occupation, or as a professional office exception as provided for under Baltimore County Zoning Regulations (BCZR) 502.1.

Without obtaining a special exception, Appellant proceeded to convert the property into a residential office

¹ Zoning across from the property on Joppa Road include the Carney Village Shopping Center, which is zoned a combination of Business (B.L. and B.L.-A.S.), and five separate structures zoned Residential Offices (R.O. or R.O.A.). Immediately to the rear of the Appellant's property is a real estate office located in a R-O zone at 3117 Joppa Road.

FILED OCT 8 2002

by making renovations to the property, which included paving the part of the yard for a parking lot and constructing a privacy fence around the rear side of the house. After renovations were complete, Appellant unsuccessfully tried to have the property rezoned to Residential Offices (R-O or R-O-A) during the 2000 Comprehensive Map Process. The issue was specifically considered by the County Council, which elected to retain the D.R. 5.5 zoning. See People's Counsel Exhibit 3A, 3B, and 3C.

Appellant then sought a special exception under the guise of professional office, which was denied by the Zoning Commissioner. Appellant appealed to the Board, which also denied Appellant's petition for special exception on the grounds that a real estate broker is not a "professional" within the meaning of BCZR 1B01.1.C.12. Moreover, the Board concluded that Appellant had failed to meet his burden of proof, under BCZR § 502.1, to show that the proposed use would not be detrimental to the character of the community. See Opinion of the County Board of Appeals of Baltimore County p. 5-6.

Appellant timely filed for appeal and presents the following questions for review by the Court:

1. Did the Board of Appeals err as a matter of law when it denied the special exception on the basis that a real estate broker is not a "professional" within the meaning of BCZR 1B01.1.C.12?
2. Was the Board's conclusion that Appellant had not met his burden of proof under BCZR § 502.1 supported by substantial evidence?
3. In denying Appellant's Petition for Special Exception, was the decision of the Board arbitrary and capricious in light of the evidence presented at the hearing?

STANDARD OF REVIEW

The scope of judicial review is extremely narrow under the Administrative Procedure Act (APA), codified as MD. CODE ANN., STATE GOV'T § 10-201 et seq. *Liberty Nursing Center v. Department of Health and Mental Hygiene*, 330 Md. 433, 442, 624 A.2d 941, 945 (1993). The Court's review is limited to whether the Board's order is in accordance with the law. *Mortimer v. Howard Research and Dev. Comp.*, 83 Md. App. 432, 441, 575 A.2d 750 (1990). Furthermore, the Court of Appeals has stated that "the court may set aside, as 'not in accordance with law,' a decision of an agency which is arbitrary, illegal, or capricious." *Id.*, citing *Levy v. Seven Slade, Inc.*, 234 Md. 145, 149, 198 A.2d 267 (1964).

In making a determination as to whether the Board's decision is not in accordance with the law, arbitrary, illegal, or capricious, the Court is limited to the record and must not make an independent *de novo* assessment of the evidence. *Zeitschel v. Board of Education*, 274 Md. 69, 82, 332 A.2d 906, 913 (1975). Rather, the Court must defer to the agency's factual findings and inferences as supported by substantial evidence. *United Parcel v. People's Counsel*, 336 Md. 569, 577, 650 A.2d 226, 230 (1994).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Caucus v. Maryland Securities*, 320 Md. 313, 324, 577 A.2d 783, 788 (1990). If there is substantial evidence on the record to support an agency's factual determinations, the Court must affirm the agency's decision, which is considered *prima facie* correct, and presumed to be valid. *Motor Vehicle Administration v. Karwacki*, 340 Md. 271, 280, 666 A.2d 511 (1995).

Where the need for judicial interpretation of an exemption statute arises, it is generally accepted that exemption statutes are to be strictly construed in favor of the State. See *Supervisor Of Assmts. v. Trustees of Bosley Methodist Church Graveyard*, 293 Md. 208, 443 A.2d 91 (1982). However, "a strict construction does not preclude a fair one. Rather it still contemplates a construction that effectuates the legislative intent and objectives; 'it does not require that an usual or unreasonable meaning be given to the words used in an exemption statute.'" *Pleasants Investments Limited Partnership v. State Dep't of Assessments & Taxation*, 141 Md. App. 481, 492, 786 A.2d 13 (2001) citing *Supervisor of Assessments v. Keeler*, 362 Md. 198, 207, 764 A.2d 821 (2001) (citations omitted). As the Court of Special Appeals stated in *Maryland-National Capital Park & Planning Comm'n v. State Dep't of Assessments & Taxation*, 110 Md. App. 677, 690, 678 A.2d 602 (1996), *aff'd*, 348 Md. 2, 702 A.2d 690 (1997) (citations omitted), "In the final analysis, the real legislative intent prevails. The burden of showing that an exemption is allowed under the law falls upon the claimant."

Accordingly, the Court's analysis of the Board's decision in the instant case is three-fold. First, the Court must decide whether the Board recognized and applied the correct principles of law governing this case. Second, the Court must examine the Board's factual findings to determine if they are supported by substantial evidence. Third, the Court must examine how the Board applied the law to the facts. The test of appellate review at this junction is whether a reasoning mind could reasonably have reached the conclusion reached by the Board, given the

facts and proper application of the controlling legal principles.

DISCUSSION

Did the Board of Appeals err as a matter of law when it denied the special exception on the basis that a real estate broker is not a "professional" within the meaning of BCZR 1B01.1.C.12?

Appellant contends that because a real estate broker must complete 90 hours of training, take 15 hours of continuing education every two years, be licensed, be subject to a code of ethics, and is regulated as a "profession" under the Maryland Business and Professional Occupations Article, a real estate broker is a "professional" under the definition provided by Webster's *Third New International Dictionary of the English Language, Unabridged*, which must be consulted when a term such as "professional" is not defined within the BCZR.² See Bill 149-1987. Therefore, his proposed use of the property as a real estate broker's office should be considered a "professional office" use within the meaning of BCZR 1B01.1.C.12.³

²Webster's *Third New International Dictionary of the English Language, Unabridged* (1981) defines "professional" as:

A. Of relating to, or characteristic of a professional; or, B. Engaged in one of the learned professions or in an occupation requiring a high level of proficiency characterized by or conforming to the technical or ethical standards of a profession or an occupation manifesting fine artistry or workmanship based on sound knowledge and conscientiousness reflecting the results of education, training, and expertise.

³BCZR 1B01.1.C.12 permits by special exception:

Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, providing that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25% of the total floor area of such residence; and does not involve the employment

The Court notes that with exception to *In Re Richard A. Dalla Tezza* Case No. 85-78-X, which is a decision of the Zoning Commissioner of Baltimore County and is therefore not binding on the Court, Maryland case law has not addressed the matter *sub judice*. However, other jurisdictions have addressed this exact issue, and in every instance known to the Court, the courts have unanimously ruled in the negative - that despite the licensing requirements, code of ethics, inclusion of real estate brokers in state professional acts or codes, and training undertaken by such individuals, real estate brokers are not "professionals." See *Seaman v. Zoning Board of Appeals of Holliston*, 340 Mass. 488, 165 NE2d 97 (1960); *Jones v. Robertson*, 79 Cal. App. 2d 813, 180 P.2d 929 (1947); *Cummings v. Pennsylvania Fire Insurance Co.*, 153 Iowa 579, 134 N.W. 79, Ann.Cas. 1913E 235, 37 L.R.A.N.S. 1169; *Pennock v. Fuller*, 41 Mich. 153, 2 N.W. 176, 32 Am. Rep. 148; *Building Commissioner of Town of Brookline v. McManus*, 263 Mass. 270, 160 N.E. 887 (1928); *Dlugos v. Zoning Board of Appeals of Trumbull*, 36 Conn. Supp. 217, 416 A.2d 180 (1980). The view expressed by the courts is best summarized in the *American Law of Zoning* § 13.10, which states in part:

The difficult problems arise when no mention is made of this [real estate office] use and a real estate broker seeks to establish a home office in a residential district urging that such a use is a customary home occupation or that a realtor is a professional person within the meaning of a regulation permitting professional offices. Both grounds for maintaining real-estate offices in residential districts have been rejected by the courts.

of more than one nonresident professional associate nor two other nonresident employees. [Bill Nos. 105-1982;65-1999]

A real-estate broker is not a professional person, as that term is employed in regulations permitting professional persons to establish home offices. While it is recognized that realtors possess some professional characteristics, these are not dominant. A real-estate broker is a business man rather than a professional person. The fact that realtors are licensed by the state does not constitute the business of selling real estate a profession within the meaning of the zoning regulations.

Furthermore, even if the Court was to blindly adopt the definition of a "professional" and "profession" as provided for in *Webster's Third New International Dictionary*, and without regard for the rules of statutory construction as contended by Appellant, the Court would arrive at the same conclusion that the Supreme Court of Nebraska did in *Tylle v. Zoucha*, 226 Neb. 476, 412 N.W.2d 438 (1987). In considering whether a real estate broker could be considered a "professional" for the purposes of the statute of limitations, the Supreme Court of Nebraska in *Tylle* adopted the same definition of "profession" as proposed by Appellant in the matter *sub judice*:

4a: a calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods as well as in the scientific, historical, or scholarly principles underlying such skills and methods, maintaining by force of organization or concerted opinion high standards of achievement and conduct, and committing its members to continued study and to a kind of work which has for its prime purpose the rendering of a public service.

Tylle, 226 Neb. at 440 citing *Webster's Third New International Dictionary*, Unabridged 1811 (1981). In adopting this definition and concluding that under this definition a real-estate broker could not be considered a professional, the court commented:

The definition stresses the long and intensive program of preparation to practice one's chosen occupation traditionally only with professions...This definition also does not rely on the mere possessions of a license. To rely solely on the possessions of a license distorts the definition, as it would include many occupations which were traditionally not considered to be professions simply because they were licensed.

Id. at 441.⁴

⁴ The Court notes that besides the definition of a "professional" and "profession", Appellant has not submitted any case law in support of his contention that a real-estate broker is a "professional". Cases cited by Appellant only go to support the position that the regulation of real-estate brokers under MD CODE ANN., BUS. OCC. & PROF. §§ 17-101 through 17-701 are recognized by the courts, which have held that the regulations are constitutional.

CONCLUSION

Having reviewed the case law, the weight of which is clearly against Appellant's position, the Court finds the *Tylle* case to be most persuasive and on point. The Court, therefore, concludes that a real-estate broker is not a judicially recognized "professional" within the meaning of the zoning ordinances. In so concluding, Appellant, as a nonprofessional, is not qualified to apply for a special exception for the operation of a professional office in a residential zone under BCZR 1B01.1.C.12, and thus, it is not necessary for the Court to address the remaining issues.

10/8/02
Date

Susan Souder
Judge Susan Souder

CC: Peter Max Zimmerman, Esq.
Carole S. Demilio, Esq.
Michael Tanczyn, Esq.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
JORGE ESCALANTE

FOR JUDICIAL REVIEW OF THE
OPINION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

CIVIL ACTION
NO.: 03-C-02-01391

IN THE MATTER OF:
JORGE ESCALANTE
FOR SPECIAL EXCEPTION
FOR THE PROPERTY KNOWN AS
3106 6TH AVENUE

CASE NO: 00-184-X

**PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY:**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

**ENTRIES FROM THE DOCKET OF THE BOARD APPEALS
AND DEPARTMENT OF PERMITS & LICENSES OF BALTIMORE COUNTY**

00-184-X

November 1, 1999 Petition for Special Exception filed by Michael P. Tanczyn, Esquire, on behalf of Jorge Escalante, to allow a professional real estate office as use of subject property.

November 18 Notice of Zoning Hearing

APR 8 2002

November 24	Entry of Appearance filed by People's Counsel for Baltimore County
November 25	Publication in newspaper
November 30	ZAC Summary of Comments
December 1	Certificate of Posting
December 16	Hearing Held before the Zoning Commissioner
January 4, 2000	Findings of Fact and Conclusions of Law issued by the Zoning Commission. Petition for Special Exception DENIED.
January 7	Petitioner's Memorandum of Law filed by Michael P. Tanczyn, Esquire, on behalf of Jorge Escalante.
January 11	Zoning Commissioner Order (previous Stricken – Revised Order to be issued).
February 4	Zoning Commissioner's Revised Order. Petition for Special Exception DENIED.
February 10	Petitioner's Request for Reconsideration by Michael P. Tanczyn, Esquire, on behalf of Jorge Escalante.
March 9	Zoning Commissioner's Order on Motion for Reconsideration. Petitioner's Motion is DENIED.
April 7	Notice of Appeal from Michael P. Tanczyn, Esquire, on behalf of Jorge Escalante.
November 6, 2001	Hearing by Board of Appeals.

People's Counsel Exhibits

PC 1	2000 B.C. Office of Planning and Zoning Map
PC2	BCCZM Log of Issue – Octo 10, 2000
PC3A	GPCC Resolution – June 11, 2001 -
PC3B	GPCC Resolution – Zoning Process policy
PC3C	GPCC June 13, 2001 Minutes

Appellant Exhibits

1A	Plat – Oct 11, 1999
2A	Site Photos

2B	Site Photos
3	Restrictive Covenant dated July 13, 2000
4	Photo -- Panoramic view
5	Photo -- Carney School
6	Photo -- Joppa Road
7A -- 7D	Diagrams of 3 levels of house with cover sheet
8A -- 8O	Photographs of subject site -- various rooms
January 9, 2002	Opinion issued by the Board of Appeals DENYING Petition for Special Exception.
February 7	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michael P. Tanczyn, Esquire, on behalf of Jorge Escalante.
February 14	Certificate of Notice sent to interested parties.
April 3	Transcript of Proceedings filed.
April 8	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Board acted are permanent records of the originating agency in Baltimore County. Certified copies of these records in the Board's file are hereby forwarded to the Court, together with exhibits entered before the Board.

Respectfully submitted,



Theresa R. Shelton, Legal Secretary
County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204 (410) 887-3180

c: Carole S. Demilio, Esquire
Michael P. Tanczyn, Esquire
Jorge Escalante
Herbert Malmud
L.W. Eiring
Mr. and Mrs. John Ryan

Tim Caslin
Don Gerding
David McCorkle
Ruth Baisden
Alanna Wilkinson, Assistant Attorney General
Pat Keller, Planning Director
Lawrence E. Schmidt / Zoning Commissioner
James E. Thompson / PDM
Arnold Jablon, Director / PDM
Edward J. Gillis, County Attorney

IN THE MATTER OF
THE APPLICATION OF
JORGE ESCALANTE - PETITIONER
FOR SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE SW/CORNER JOPPA
ROAD AND SIXTH AVENUE
(3106 SIXTH AVENUE)

11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 00-184-X

* * * * *

OPINION

Background

This matter is before the Board on an appeal from a decision of the Zoning Commissioner of Baltimore County denying a special exception for a professional office (real estate broker) on a residential property owned by Mr. Escalante at 3106 Sixth Avenue in Carney, Baltimore County, Maryland. Mr. Escalante was represented by Michael P. Tanczyn, Esquire. Deputy People's Counsel Carole S. Demilio opposed the Petition for Special Exception. The hearing was held before the Board on November 6, 2001. The parties filed briefs with the Board, which were submitted by close of business on December 3, 2001. A public deliberation was held on December 19, 2001.

Facts

The Petitioner is the owner of 3106 Sixth Avenue which he purchased in October 1998. This is a .22 acre corner lot located on the southwest corner of Joppa Road and Sixth Avenue just east of Harford Road and Avondale Road. The property is zoned D.R. 5.5. The zoning across Joppa Road for five separate structures immediately east of the Carney Village Shopping Center is R-O. The Carney Village Shopping Center is zoned a combination of B.L. and B.L.-A.S. The

property immediately adjacent to the rear of the site, known as 3117 Joppa Road, is zoned R-O and is improved with a 2 ½ story frame structure which is used as a real estate office.

Mr. Escalante indicated that he had transferred the property to his mother. He also testified that he purchased the property after it had been vacant for several years. The property was in very great disrepair and he made major improvements, gutting the interior of the structure and refurbishing all of the rooms. The house is a split-level house, and Mr. Escalante has made an office in the basement of the house. He presented a drawing of the house and indicated that he had taken measurements of each room and that the office did not occupy more than 25 percent of the total space of the home. Mr. Escalante has also paved the front part of the yard of the home to make a parking lot for approximately two cars. He has constructed a privacy fence around the rear and side of the home to shield the office and driveway from the neighbors. Mr. Escalante is a real estate broker with a broker's license. He employs one sales person and a nonprofessional individual in the office.

Mr. Escalante performed the renovations on the home and constructed the office without obtaining a special exception. He tried unsuccessfully to have the site rezoned to R-O or R-O-A in the 2000 Comprehensive Map Process. It was a specific issue considered by the County Council, and the Council elected to retain the D.R. 5.5 zoning. He stated that he tried to sell the property after the decision by the Zoning Commissioner but has been unable to sell. He owns several other pieces of property, one at 3128 E. Joppa Road, which has two apartments, and a piece of property on Harford Road which he used as an insurance sales office for a period of time but is now vacant.

Hubert Malmud, a licensed property line surveyor, testified on behalf of Mr. Escalante with respect to the zoning of various pieces of property in the surrounding area. He testified that

he had driven around the surrounding neighborhoods, and it was his opinion that there would be no congestion in the roads or alleys as a result of the operation of a real estate office at the subject site. He also indicated with generally "yes" or "no" answers with respect to the other criteria set forth in § 502.1 of the *Baltimore County Zoning Regulations* (BCZR) in order to meet the requirements for a special exception.

Marilyn Ryan, a neighbor living at 3014 Sixth Avenue, testified on behalf of the People's Counsel. She felt that if the special exception was allowed it would be encroaching into the community of Thornwood Park in which she lives. In addition, she stated that it is difficult to get onto Joppa Road from the subject property site and that individuals would probably be turning right coming out of the driveway of Mr. Escalante's home, and would be going through the community in order to gain access to Joppa Road from another avenue.

Ruth Baisden, President of the Greater Parkville Community Council, testified that it was the position of their association that the house was not an appropriate site for a real estate office. It was her position that there were a number of offices available along Joppa Road where a real estate business could be located.

Decision

Offices and other commercial uses are prohibited in residential zones with the two exceptions of a home occupation and a professional office. The home occupation is not in question in this situation. The Petitioner contends that Mr. Escalante is a professional and therefore qualifies for the special exception under the professional office criteria, not using more than 25 percent of the home for his business. The issue is whether or not a real estate broker can be considered a professional within the meaning of the *Baltimore County Zoning Regulations* (BCZR).

Section 1B01.1.C.12 permits, by special exception:

Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, providing that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25 percent of the total floor area of such residence; and does not involve the employment of more than one nonresident professional associate, nor two other nonresident employees.

Counsel for Mr. Escalante argues that he falls within the definition of "other professional persons" as set forth in the above section. He cites the fact that Mr. Escalante has a Bachelor of Science degree from the University of Lima, Peru, in Business Administration and has completed 36 of 48 credits towards an MBA degree at Johns Hopkins University. He began his own business in March of 1998 and his co-employee is his fiancée who is a licensed real estate agent. Counsel cites the fact that, as a real estate broker, Mr. Escalante was required to attend 90 hours of training, and is required to take 15 hours of continuing education every two years in order to keep up his real estate broker's license. If he fails to take the continuing education courses, his license becomes inactive and he is not allowed to conduct business.

Counsel also states the fact that real estate brokers are governed by the Maryland Real Estate Brokers Act and the State Real Estate Commission, which has the power to license, discipline and renew licenses and monitor the continuing education programs. He cites the fact that a real estate broker is required to have continuing education in the relevant changes to Federal, State and local Fair Housing Laws, including fair housing advertising. The broker must attend courses on these matters conducted by the Maryland Association of Realtors or member boards or the Real Estate Brokers of Baltimore City, or other similar professional associations.

Counsel also contends that the decision rendered by the Zoning Commissioner *In the Matter of Richard A. Dalla Tezza*, in Case No. 85-78-X, which denied a special exception for a

real estate broker based on the fact that the definition of "other professional" in the County's zoning regulations did not include a real estate broker, is not relevant at the present time. He cites the fact that the *Baltimore County Zoning Regulations* now require that, where a definition is not included within the regulations, the *Webster's Third New International Dictionary of the English Language, Unabridged* must be consulted for the definition. He cites the definition of a "professional" as set forth in *Webster's International Dictionary* and relies in part on a section of that definition.

The Board has reviewed the testimony given at the hearing and the briefs submitted by the parties. The Board is persuaded by the excerpts from the *American Law of Zoning*, § 13.10, cited by the Deputy People's Counsel. That states in part:

Problems arise when no mention is made of this use. And a real estate broker seeks to establish a home office in a residential office urging that such a use is a customary home occupation or that a realtor is a professional person within the meaning of the regulation permitting professional offices. Both grounds for maintaining real estate offices in residential districts have been rejected by the courts.

A real estate broker is not a professional person, as that term is employed in regulations permitting professional persons to establish home offices. While it is recognized that realtors possess some professional characteristics, these are not dominant. A real estate broker is a businessman rather than a professional person. The fact that realtors are licensed by the State does not constitute the business of selling real estate a professional within the meaning of the zoning regulations....

Even the definition as set forth by the Petitioner in his brief, citing *Webster's Third New International Dictionary of the English Language, Unabridged*, supports the fact that a real estate broker is not a professional. Professional is therein defined as:

A. Of, relating to, or characteristic of a professional; or, B. Engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency characterized by or conforming to the technical or ethical standards of a profession or an occupation manifesting fine artistry or workmanship based on

sound knowledge and conscientiousness reflecting the results of education, training, and experience.

All of the professions cited in the zoning regulations which allow for a professional office in the home are professions requiring extensive education and professional training. The 90 hours of real estate courses required to obtain a broker's license do not qualify for the status of a professional as compared to a doctor, engineer, or lawyer. Many individuals are considered, and may be called, professionals, such as professional athletes, professional truck drivers, and other various occupations. Other occupations require licenses in order to perform their jobs, but could not be considered professionals, such as beauticians, electricians, and plumbers. The Board is aware that the *Della Tezza* decision was decided in October 1984, and no effort has been made by the Baltimore County Council to change the definition of "professional" to include real estate brokers in the occupations set forth in BCZR § 1B01.1.C.12. It is not for this Board to change the definition to include real estate brokers. Therefore, the special exception is denied.

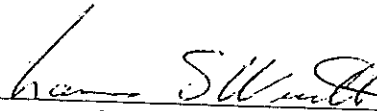
While it is not necessary for the Board to reach the question of whether or not the use would meet the requirements of § 502.1 of the BCZR, the Board does note that Mr. Malmud testified as to the criteria, and did discuss the traffic aspects of the requirements. However, with respect to the other requirements of § 502.1, he did give conclusory "yes" or "no" answers without supporting facts. The Board considers that this does not meet the test of sufficient evidence as stated by the Court in *People's Counsel v. Beachwood*, 107 Md.App. 627, 649-51 (1995): "A self evident reason for rejecting as an effective catalyst as expert opinion that a mistake was made is the fact that the opinion is merely conclusory or is at best quasi-conclusory.... The opinion of an expert is of little or no weight in the absence of strong supporting facts."

ORDER

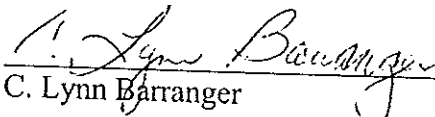
THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 9th day of January, 2002, that the Petition for Special Exception seeking approval of a professional office in a residential property zoned D.R. 5.5 be and the same is hereby DENIED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence S. Wescott, Chairman


Melissa Moyer Adams


C. Lynn Barranger

Sophie

IN RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
SW/Corner Joppa Road and Sixth Avenue
(3106 Sixth Avenue) * ZONING COMMISSIONER
11th Election District
6th Councilmanic District * OF BALTIMORE COUNTY

Jorge Escalante * Case No. 00-184-X
Petitioner *

* * * * *

ORDER ON THE MOTION FOR RECONSIDERATION

This Zoning Commissioner issues for the fourth time in this case an Order relative to the above-captioned matter. By way of background, this matter came before this Zoning Commissioner for consideration of a Petition for Special Exception filed by the owner of the subject property, Jorge Escalante, through his attorney, Michael P. Tanczyn, Esquire. At a public hearing held on December 16, 1999, the Petitioner sought special exception relief for a professional office (real estate broker) in his residence on the subject property, pursuant to Section 1B01.1.C.12 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Policy Manual, in accordance with the site plan submitted into evidence and marked as Petitioner's Exhibit 1.

I issued my initial decision on January 4, 1999 denying the Petition for Special Exception for reasons set forth therein. Although I found the location entirely appropriate for a real estate office, I determined that a real estate broker was not a "professional person", pursuant to Section 1B01.1.C.12 of the B.C.Z.R. That decision was issued prematurely, however, prior to the receipt of Memorandum submitted by Petitioner's Counsel. Thus, my second decision in this case, by Order issued January 11, 2000, struck the initial Order so as to provide this Zoning Commissioner with the opportunity to review the Petitioner's memorandum.

I reviewed that Memorandum and issued my third decision on February 4, 2000. That decision incorporated my original Findings of Facts and Conclusions of Law and Order and denied the Petition. Again, I found that a real estate broker was not a professional person. Mr. Escalante

and his Counsel are, at the least, persistent. By letter of February 10, 2000, the Petitioner's Counsel asked that I revisit this issue again. Counsel's letter will be considered a Motion for Reconsideration, pursuant to Rule K(Appendix G) of the Rules of Practice and Procedure before the Zoning Commissioner/Hearing Officer of Baltimore County.

Within his Motion for Reconsideration, the Petitioner requests that I consider two additional authorities for support of his position that a real estate broker is a professional person. First, the Petitioner cites Page 1B-13 of the Zoning Commissioner's Policy Manual. Indeed, that Section reads that a real estate person is considered a professional person. As authority, prior Case No. 85-78-X (In Re: Richard A. Dalla Tezza) is cited. This is obviously a typographical error. A review of that case, as described in my prior decision, indicates that a real estate agent was not considered a professional person. The Zoning Commissioner's Policy Manual is incorrectly written; Case No. 85-78-X is contrary to Petitioner's position in the instant matter.

Second, the Petitioner cites certain provisions of the Corporations and Associations Article of the Annotated Code of Maryland. These Sections (4A-101 and 5-101) provide certain definitions and regulate professional service corporations. Indeed, a "professional service", as defined and utilized in those Sections, includes a licensed real estate broker or licensed real estate sales person. Other professional service occupations set out in those Sections include certain occupations which are recognized as professional persons in the B.C.Z.R.

Nonetheless, I remain unconvinced. The Petitioner has not presented any case law supporting his allegation, nor has the County Council acted to broaden that classification of professional persons identified in the B.C.Z.R. Absent that authority, I also decline to broaden the interpretation of that Section. I recognize that the occupation of real estate broker/agent has become more sophisticated over the years and that this particular site appears an appropriate location for a real estate office. Nonetheless, I will not exercise the authority of the Zoning Commissioner's Office to expand the B.C.Z.R. This need be done either by act of the County Council or an expansion through an appellate decision through the Courts of this state.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 9th day of March, 2000 that the Motion for Reconsideration filed in the above-captioned matter, be and the same is hereby DENIED.

The Petitioner shall have thirty (30) days from the date of this Order to file an appeal of this decision.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Mr. Jorge Escalante
3106 Sixth Avenue, Baltimore, Md. 21234
Mr. L. W. Eiring, 3016 Sixth Avenue, Baltimore, Md. 21234
Mr. & Mrs. John Ryan, 3014 Sixth Avenue, Baltimore, Md. 21234
Mr. Tim Caslin, 2808 Andrea Avenue, Baltimore, Md. 21234
Mr. David L. McCorkle, 3102 Sixth Avenue, Baltimore, Md. 21234
Mr. Don Gerding, 335 Old Trail, Baltimore, Md. 21212
People's Counsel; Case File

Sophie

IN RE: PETITION FOR SPECIAL EXCEPTION	* BEFORE THE
SW/Corner Joppa Road and Sixth Avenue	* ZONING COMMISSIONER
(3106 Sixth Avenue)	* OF BALTIMORE COUNTY
11 th Election District	* Case No. 00-184-X
6 th Councilmanic District	*
Jorge Escalante	
Petitioner	

* * * * *

REVISED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This matter came before this Zoning Commissioner at a public hearing held on December 16, 1999, for consideration of a Petition for Special Exception filed by the owner of the subject property, Jorge Escalante, through his attorney, Michael P. Tanczyn, Esquire. The Petitioner sought special exception relief for a professional office (real estate broker) in his residence on the subject property, pursuant to Section 1B01.1.C.12 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Policy Manual, in accordance with the site plan submitted into evidence and marked as Petitioner's Exhibit 1.

At the public hearing, Jorge Escalante, property owner, appeared as did Herbert Malmud, the Registered Land Surveyor retained by the Petitioner to prepare the site plan for this property, and Michael P. Tanczyn, Esquire, attorney for the Petitioner. Appearing as Protestants in the matter were L. W. Eiring, David L. McCorkle, and John and Marilyn Ryan, nearby residents of the area, and Tim Caslin, who appeared on behalf of the Carney Improvement Association, Inc.

At the conclusion of the hearing, I agreed to give all parties an opportunity to submit Memorandum in support of their respective positions by no later than January 7, 2000. However, after reviewing the testimony and evidence offered at the hearing and researching the law, I prematurely issued a Findings of Facts and Conclusions of Law and Order, dated January 4, 2000, denying the Petitioner's request. Subsequent to the issuance of said Order, Counsel for the Petitioner reminded this Zoning Commissioner of the opportunity previously afforded the Petitioner and, by subsequent Order dated January 11, 2000, the prior Order was stricken.

Counsel for the Petitioner has indeed submitted a 13-page Memorandum in support of Mr. Escalante's position. As is usual, Mr. Tanczyn's memorandum is well-written and researched. Nonetheless, I remain unconvinced that the Petition for Special Exception should be granted. I explain.

Counsel's Memorandum is essentially broken down into three sections. The first is a recitation of the facts which were offered at the hearing. Although written in a light most favorable to his client, Counsel's recitation of the facts is accurate. The testimony and evidence offered at the hearing, as summarized in the Memorandum, is correct. As the finder of facts, I found that the written decision by me on January 4, 2000 is indeed largely consistent with Counsel's representations.

Secondly, Counsel offers legal argument that the proposed use meets the requirements of Section 502.1 of the B.C.Z.R. That Section sets out the requirements for special exception relief to be granted. Essentially, a Petitioner seeking special exception relief must show that the proposal will not be detrimental to the health, safety and general welfare of the surrounding locale. Specifically enumerated standards set out in Section 502.1 need be addressed.

As was also noted in my prior Order, I believe that this lot is an appropriate location for a real estate office. The nature of the neighborhood and surrounding properties is persuasive to a finding that an office, even if not contained within a dwelling, would be appropriate here. Nonetheless, this is not the issue before me. Whether this property should be rezoned to permit an office use is a decision which lies within the exclusive jurisdiction of the Baltimore County Council, or in certain circumstances, the County Board of Appeals. I have no such authority. I will not, either directly or indirectly, impose my conclusions on either the Council or the Board. Obviously, those bodies are independent of the Office of the Zoning Commissioner; however, the facts of this case are indeed what they are.

It is the third section of Mr. Tanczyn's memorandum with which I take issue. In this regard, much of the prior decision rendered by me in this case was devoted to an analysis of whether a real estate broker is a "professional person" under the B.C.Z.R. I stand by my reasoning

and conclusions issued in that prior Order and adopt and incorporate that decision herein. The consistent and unanimous interpretation of the issue presented in this case by Courts across the country is that a real estate broker is not a professional person, within the zoning scheme. Counsel for the Petitioner has not produced any cases with a contrary holding, and as noted in my prior decision, I found none during my research. Thus, the precedent established by Courts throughout the country supports my prior finding. Moreover, in addressing the specific arguments advanced by Counsel, the following must be observed.

First, indeed it is true that the Maryland State Legislature, enacted in 1994, the Maryland Real Estate Brokers' Act, which is now codified in the Maryland Business, Occupations and Professions Article, Annotated Code of Maryland. However, it is to be noted that this legislation was not the first attempt by the State legislature to regulate real estate brokers and agents. As set out in Counsel's memorandum, the State of Maryland has long had regulation over the persons engaged in this occupation.

Admittedly, the business of real estate brokers and agents has become more complex through the years. So has the regulation of those occupations. However, I do not find that the heightened level of regulation and the increased complexity of the real estate business support a finding that a real estate broker is a professional person, at least under the zoning scheme. As noted in my prior written opinion, the Courts have determined, notwithstanding the fact that a real estate broker must be licensed, must be of good morale character, must study and learn real estate law, must pass an examination in order to be licensed, and must pay fees for such licensing, that the occupation still does not rise to the level of a professional under the zoning scheme. Thus, the requirements presently set out in the Annotated Code of Maryland, although they have evolved over the years, do not compel a finding that a real estate broker is a professional person under the B.C.Z.R.

Secondly, the prior decision of this Office in Case No. 85-78-X is significant. As referenced in my prior written decision, that case concerned a similar application by Richard A. Dalla Tezza for special exception relief for a real estate broker's office in his residence. In a

written decision, then Zoning Commissioner Arnold Jablon denied the application and found that a real estate broker was not a professional person. What I find significant about that decision is the fact that, notwithstanding the passage of nearly 15 years since the entry of Commissioner Jablon's Order, the County Council has failed to make any amendment to the language set out in Section 1B01.1.C.12 of the B.C.Z.R. Surely, had the County desired, it could have amended that Section to specifically include a real estate broker as a professional person. Other professions are specifically and precisely identified in that Section, including, for example, lawyers, doctors, and engineers. However, there has been no such action by the Council, although it surely has been aware of, and is presumed to know, the Zoning Commissioner's interpretation of the B.C.Z.R.

Third, Counsel also draws my attention to the language found in the description of "professional" as set out in Webster's Third New International Dictionary of the English Language, Unabridged. The definition provided therein is indeed different from that previously utilized by Commissioner Jablon, as found in Black's Law Dictionary and American Heritage Dictionary. As noted in Counsel's memo, the definition of "profession" in Webster's is expansive. That precise definition which appears most applicable here is that one related to a person, "...engaged in a learned profession or in an occupation requiring a high level of training and proficiency, characterized by or conforming to the technical or ethical standards of a profession or occupation..."

Although a matter of interpretation, it is my judgment that the occupation of a real estate broker does not rise to that level. I again reference the decisions by Courts issued throughout the land on this issue. As cited in my prior decision, the Courts have consistently held that although the occupation of a real estate broker may have many of the attributes of a professional person, such occupation has not met the status of a professional under zoning laws. Despite the well-reasoned and thoughtful arguments of Counsel, I remain unconvinced, based on the present state of the law in Baltimore County. Thus, the Petition for Special Exception must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth herein, the relief requested must be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 4th day of February, 2000 that the Petition for Special Exception seeking approval of a professional office (real estate broker) in his residence on the subject property, pursuant to Section 1B01.1.C.12 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Policy Manual, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

The Petitioner shall have thirty (30) days from the date of this Order to file an appeal of this decision.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

Sophie

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
SW/Corner Joppa Road and Sixth Avenue		
(3106 Sixth Avenue)	*	ZONING COMMISSIONER
11 th Election District		
6 th Councilmanic District	*	OF BALTIMORE COUNTY
Jorge Escalante	*	Case No. 00-184-X
Petitioner	*	

* * * * *

ORDER

This matter came before this Zoning Commissioner for consideration of a Petition for Special Exception filed by the owner of the subject property, Jorge Escalante, through his attorney, Michael P. Tanczyn, Esquire. The Petitioner sought a special exception for a professional office (real estate broker) on the subject property, pursuant to Section 1B01.1.C.12 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Policy Manual, in accordance with the site plan submitted into evidence and marked as Petitioner's Exhibit 1.

At the requisite public hearing held on December 16, 1999, Jorge Escalante, property owner, appeared as did Herbert Malmud, Registered Land Surveyor who prepared the site plan for this property, and Michael P. Tanczyn, Esquire, attorney for the Petitioner. Appearing as Protestants in the matter were L. W. Eiring, David L. McCorkle, and John and Marilyn Ryan, nearby residents of the area, and Tim Caslin, who appeared on behalf of the Carney Improvement Association, Inc.

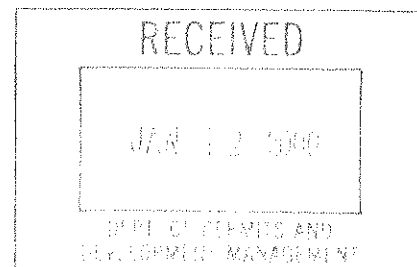
At the conclusion of the hearing, I agreed to give all parties an opportunity to submit Memorandum in support of their respective positions by no later than January 7, 2000. However, due to an oversight on my part, I issued a Findings of Facts and Conclusions of Law and Order on January 4, 2000. Subsequent to the issuance of said Order, Counsel for the Petitioner timely submitted his Memorandum, by cover letter dated January 7, 2000, and asked that I strike the Order previously issued.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County
this 11th day of January, 2000 that the Order issued in the above-captioned matter on January 4,
2000 be and is hereby STRICKEN and a revised Order shall be issued.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs



Sophie

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
SW/Corner Joppa Road and Sixth Avenue		
(3106 Sixth Avenue)	*	ZONING COMMISSIONER
11 th Election District		
6 th Councilmanic District	*	OF BALTIMORE COUNTY
Jorge Escalante	*	Case No. 00-184-X
Petitioner	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by the owner of the subject property, Jorge Escalante, through his attorney, Michael P. Tanczyn, Esquire. The Petitioner requests a special exception for a professional office (real estate broker) on the subject property, pursuant to Section 1B01.1.C.12 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Policy Manual. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of this request were Jorge Escalante, property owner, Herbert Malmud, Registered Land Surveyor who prepared the site plan for this property, and Michael P. Tanczyn, Esquire, attorney for the Petitioner. Appearing as Protestants in the matter were L. W. Eiring, David L. McCorkle, and John and Marilyn Ryan, nearby residents of the area, and Tim Caslin, who appeared on behalf of the Carney Improvement Association, Inc.

Testimony and evidence offered revealed that the subject property is located on the southwest corner of the intersection of Joppa Road and Sixth Avenue in the subdivision of Thornewood Park in Carney. The property contains a gross area of 0.22 acres, more or less, zoned D.R.5.5, and is improved with a brick and frame building which has historically been used as a dwelling. Although the property is zoned D.R.5.5, it is on the fringe of a commercial area. The

property immediately adjacent to the rear of this site, known as 3117 Joppa Road, is zoned R.O. and is improved with a 2½ story frame structure which is used as a real estate office. Across Joppa Road from the subject site are several properties, zoned R.O., featuring buildings that have been converted from single family homes to office uses. Across Sixth Avenue from the subject site is the Carney Elementary School and the major intersection of Harford Road and Joppa Road is located nearby. That intersection and the properties adjacent thereto have been commercially developed. Much of that area is zoned B.L.

Mr. Escalante purchased the subject property approximately two years ago and presently resides thereon. At the time of his purchase, the property was deteriorated and in dilapidated condition. Since his purchase of the property, Mr. Escalante has significantly upgraded the property. He has replaced many of the windows, installed a new kitchen, cleaned up the exterior of the building and yard area, and generally made significant improvements to the site. The rear of the site has also been improved with an asphalt parking area.

Further testimony revealed that Mr. Escalante is a licensed Real Estate Broker. Although previously working for other real estate companies, he is now self-employed through his own company known as Real Estate Experts, Inc. The company specializes in the acquisition of properties subject to foreclosure.

The Petitioner has filed the instant request seeking approval to open a real estate broker's office in his dwelling, pursuant to Section 1B01.1.C.12 of the B.C.Z.R. That Section permits, by special exception:

"Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, providing that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25% of the total floor area of such residence; and does not involve the employment of more than one non-resident professional associate, nor two other non-resident employees."

The undisputed testimony and evidence presented at the hearing was persuasive that Mr. Escalante meets many of the requirements of the aforementioned Section. That is, I find that

the subject building does serve as his primary residence, that the proposed office area will not occupy more than 25% of the total floor area of the building, and that Mr. Escalante does not propose the employment of more than one non-resident professional associate, or two other non-resident employees.

Additionally, testimony and evidence presented was sufficient to satisfy the standards set forth in Section 502.1 of the B.C.Z.R. That Section sets out the criteria which must be met in order for special exception relief to be granted. In this case, I would find that the Petitioner meets those requirements and that the use of the subject property as a dwelling with a professional office would not be detrimental to the health, safety or general welfare of the locale. Indeed, this property, given its location, is an appropriate site for a professional person to establish an office therein. Similar uses abut the subject property, or are nearby. Moreover, this property is located near a commercial center. It is a corner lot with frontage on a major street (Joppa Road). For all of these reasons, a finding that the use of the property as a dwelling with a professional office complies with the standards set out in Section 502.1 of the B.C.Z.R. is warranted. In fact, a rezoning of the property to allow an office use may well be appropriate.

Irrespective of these findings, however, the Petitioner's request cannot be granted. The application fails in this instance because Mr. Escalante's occupation as a real estate broker is not considered a professional person, within the context of the regulation. In this regard, Counsel for the Petitioner submitted a series of documents and exhibits in an effort to establish that a real estate broker is a professional person. Selected portions of the Business and Occupations Article of the Annotated Code of Maryland (Title 17) were submitted. These Sections establish that real estate brokers must be licensed in the State of Maryland, are regulated by the Board of Realtors, are subject to education requirements, etc. Nonetheless, they are not considered professionals. I explain.

The identical issue presented herein was previously considered by the Office of the Zoning Commissioner in prior Case No. 85-78-X. That case concerned the application of Richard A. Dalla Tezza for special exception relief for a real estate broker's office in his residence. In a written opinion authored by then Zoning Commissioner Arnold Jablon, the application was denied.

Then Commissioner Jablon cited a series of cases relating to other occupations (i.e., chemist, rabbi, industrial designer, etc.) which related to this issue. Additionally, Commissioner Jablon cited Colker v. D.C. Board of Zoning Adjustment, (474 A2d 820 (1983)) where the Court faced similar language found within the B.C.Z.R. In that case, the Court determined that Mr. Colker, a Certified Public Accountant, was not a professional person.

Commissioner Jablon's opinion, although not binding on this Zoning Commissioner, is instructive. It discusses the treatment of language similar to that contained within the B.C.Z.R. by Courts throughout the United States. Moreover, this Zoning Commissioner has researched this issue further and identified a number of cases where the precise occupation at issue (i.e., real estate broker) was considered. In Jones v. Robinson, 180 P2d 929 (1947), a California appellate court rejected the assertion that a real estate broker was a professional person under the applicable zoning regulation. Although acknowledging that a real estate broker needed a license, was required to be of good moral character, must study and learn real estate law, needed to pass an examination in order to be licensed and was required to pay a fee for such licensing, the Court concluded that a real estate broker is not a professional person. Many of these same requirements are set out in the Business and Occupations Article of the Annotated Code of Maryland. A similar result was reached in Cummer v. Narbeth Borough, Board of Adjustment, 59 PA, D & C (1947). In that case, the Court, although acknowledging that a real estate broker has many of the attributes of a professional person, observed that such occupation has not met the status of a professional person under zoning laws. See also Riverside v. Kuhn, 82 NE 2d, 500 (1948), Seaman v. Zoning Board of Appeals, 165 NE 2d 97 (1960), Hackett v. Gale, 179 A2d 451 (1962) ("a real estate broker is a business, not a profession"), Katman v. Long Beach Township, 231 A2d 852 (1961), People v. Cully Realty, Inc., 442 NYS2d 847 (1981), and Ridley Township v. Pronesti, 244 A2d 7 (1968).

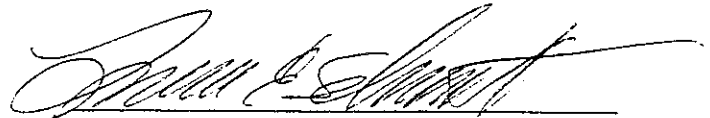
All of the above-cited cases reached the same conclusion, that a real estate broker is not a professional person within the zoning scheme. My research found no cases with a contrary finding.

Based on the foregoing, I find that a real estate broker is not a professional person under the B.C.Z.R. Thus, the Petition for Special Exception must be denied. The Petitioner must either seek a rezoning of his property, which may well be warranted, or a change to the governing regulation in order to obtain the relief he seeks.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 4th day of January, 2000 that the Petition for Special Exception to approve as a professional office, the use of the subject property for a real estate broker's office, pursuant to Section 1B01.1.C.12 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Policy Manual, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

The Petitioner shall have thirty (30) days from the date of this Order to file an appeal of this decision.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs